THE DEBATE.

Continuation [of the Cannon-Campbell Contest in the House.

Moulton's Argument.

Continued from Wednesday's Daily.

Now, my friend in his report goes on further to amplify his words, as follows:

And with reference to the election of delegates who (if they hold any office or franchise at all) can be nothing but agents representing the property and common territory of all the people; it operates only on the lower branch of Congress, for their election extends no right to them to interfere with the business of the Senate, or to act as members thereof.

Now, under the Constitution, Congress can make all needful rules and regulations in relation to the territories. It has been decided that Congress is the sole judge of this power. If this is so, why cannot Congress pass a law, if it deems it necessary, defining the qualifications of Delegates as necessary and proper for the regulation of the territories? This right and power has never before been questioned, and when Congress passes such a law it is binding on this House and every branch of the government.

The view of the minority upon the question is this, that this House can impose qualifications upon delegates: It can fix limitations with reference to delegates, and when the House has made the qualifications that have been made by the passage of a general law already referred to, providing that the Constitution of the United States shall operate in all of the Territories so far as applicable, that that act and by that law they did fix and establish qualifications and limitations and by that act they adopted the Constitution as a part of the statute law, suppose they had put it in another form; suppose they had put it in this form, and had passed a statute adopting and restating the very language of the Constitution giving a delegate the same qualifications that the Constitution requires for members of Congress, and that he must possess these qualifications before he could take his seat. I would like to have my friends upon the other side say whether that would not be a valid law passed by Congress and binding upon this House until repealed by an act of Congress. What is the reason it would not?

But suppose we take the other view of the case, and admit for the sake of the argument that the Constitution is inapplicable, that it has no relevancy, and does not apply to the case, then what is the condition? Why, we are placed in this condition: that Congress has passed a law, as I have already stated, that the territories shall have the right to send delegates here to take their seats upon the floor. Now, if they have not prescribed any qualifications for the delegates and the constitutional provision does not operate, what standard do you fix? Is the standard of qualification to be wholly arbitrary and at the caprice of each succeeding House? Now, does not this follow as a logical conclusion from the premises that where you have fixed no qualifications, no limitations, where you have not said who shall or who shall not hold the seat, or whether he shall be white or black; the people of the Territories are judges of the matter for themselves, and select the persons whom they desire to send here to represent their interests? Congress specifies no qualification. Then the rights of the people as to the Delegate are absolute, and this has been the theory and practice for ninety years. The people have the right to stand upon the law; they have the right to rely upon what is "nominated in the bond." What rule will you apply when they are given the right to have a seat here, and come clothed with all of the power necessary to occupy it?

It seems to me that if you take the ground that the Constitution does not apply, then this consequence, as I have stated, necessarily follows, that you have said to the people of that Territory, "You shall have the absolute right to send a Delegate here of your own selection to take his seat under his oath of office, and you may exercise the right; but if the Delegate does not suit us we will not permit him to take his seat." I ask again, and I ask my friend upon the opposite side of the question, to say, if they can, when this man comes holding such credentials as a Delegate, whether you can apply the constitutional provision to him as to qualification that you apply to those who represent the people of the States? And why not apply the same rule? You say in answer: "He is outside of the Constitution; he is but the very agent of the Territory; he comes with just such powers as the law clothes him with, and no more or less." This we think no answer. The law could have fixed qualifications, but it did not, and therefore the presumption is that Congress did not intend to prescribe qualifications for Delegates.

The law simply says to the people: judge for yourselves, send up the man whom you desire to represent your interests, and he shall have a seat. I say that if there is no qualification prescribed by the law you cannot exclude him, the man whom the people have sent, after you have permitted them to send him and he holds the certificate of his election and comes here claiming his right to a seat. This House, under the law, has no power to exclude. Why now, for the first time, after the Delegate appears, apply additional qualifications and say that if he is a polygamist, a Catholic, a Methodist, or an atheist he shall not be seated, when there was no such provision in the law? By the operation of that law that binds Congress, that binds everybody, he is entitled to come here, and, no limitations or qualifications having been specified, is entitled to his seat. There are many instances of the operation of law upon that principle, which are known to every lawyer, and the law is to be construed according to the language and import, and nothing can be added to it by mere construction changing the law. Therefore, whether you take the fact that the Constitution has applied to him and the qualifications therein specified operate upon him, or whether you exclude that thought or idea, or whether he comes here under the law without any qualifications being fixed by it, you have no right to exclude in either case, certainly not in the latter case, because there was not under the law at the time of his election any qualification prescribed, and this House is as much bound by the law as the Delegate himself or the humblest individual in the land.

I want now, Mr. Speaker to call the attention of the House, as briefly as I can, to one or two other propositions. I have forebore any discussion upon the number of votes shown by Mr. Cannon, naturalization or anything of that kind; because it has been conceded by the majority of the committee that Mr. Cannon had over 18,000 votes, and that Mr. Campbell had about 1,300; it is conceded that Mr. Cannon had been seven years a citizen of the United States, and also that he was an inhabitant of the Territory at the time of his election; if the constitutional qualifications are to be applied to him, that he is qualified. These facts being conceded, what is the reason that he is not entitled to his seat? The gentleman from Tennessee says notwithstanding the infamy of the man—and I think the history of Congress bears him out in that—notwithstanding the infamy of the man, if he is sent here from a state he is bound under the Constitution to let him in; and if that law applies to a delegate, the same logic would compel you to let him in.

But it is said here, and it has been stated repeatedly, that Mr. Cannon admits that he is or was a polygamist on the first day of June, 1880. The principal objection that has been urged, and I may say the only argument that has been made, and in my judgment the only argument that can be made, is simply and solely that he was a polygamist, and therefore that he is a polygamist to-day. That is the argument and reason given why he should not be seated, and that is the naked question. Now I desire to address myself to that part of the argument under the operation of the anti-polygamy bill before referred to.

Mr. Townshend, of Illinois. Is there any evidence he was living in a state of polygamy since the adoption of that law?

Mr. Moulton. No sir. I want to say a word or two as to the admission of Mr. Cannon as to being a polygamist. I want to call the attention of the House in the first place to the admission that they say was made and the circumstances under which it was made, to see what force and effect it has and how far and to what extent Mr. Cannon is bound by that admission or how it affects him.

In 1881, in the contest of Campbell vs. Cannon, at the end of a deposition that seems to have been taken in that contest, the admission is made that has been read. Now in the record there is not a particle of explanation given why it was made, or for what purpose it was made, or how it came to be there. I say there is not a particle of evidence in the record as to that. We are trying this case upon the law and upon the evidence. Some gentlemen have intimated that to exclude Cannon it is only necessary for them to know that he made that admission, without reference to what the law or the Constitution or anything else is. There is the admission. He protested at the time it was made against it, and says it is improper and irrelevant to any issue in the case. Still the admission is there, and it shows that he had been or was then cohabiting with plural wives. That is all it shows. It is an extraneous fact thrust into the record.

Now, suppose for the purpose of the argument the admission was made. We say very frequently we admit a thing for the purpose of the argument. That is done in pleading. But he makes it under protest, and puts it on the distinct ground it is wholly irrelevant. And I say here, as a lawyer, and I do not think any lawyer on this side will differ from me, that so far as the issue between Campbell and Cannon was concerned it was wholly irrelevant to any issue in the case, whether you apply the constitutional provision of qualification or whether you take the law that makes no qualification. If the law prescribes no qualification then he has a right to come here and demand his seat under the law, whether he is a polygamist or not. There is the admission. This case must be tried by the law and the evidence.

Now, Mr. Cannon had the right to assume that polygamy was no issue in his contest with Campbell, for the reason that this House in the case of Maxwell vs. Cannon in the Forty-third Congress, where the precise question was involved, the committee on election unanimously decided that polygamy was no disqualification for a delegate; and this report was made by republicans, and the House sustained it, and Cannon took his seat. Therefore Mr. Cannon was justified in regarding polygamy as not being an issue and as not affecting his rights.

It is said that, the admission being made, the anti-polygamy law that was passed by this Congress operates and excludes Mr. Cannon. I admit that this law operates *in presenti*. I do not admit that it operates retrospectively, and I want to show to the House, which I think I can do in a very few moments, that this anti-polygamy law deprives Mr. Cannon of no right whatever, and cannot possibly affect him, for the reasons which I think I can give.

The first section of this act provides:

"Every person who has a husband or wife living who, in a territory or other place over which the United States have exclusive jurisdiction, hereafter marries another, whether married or single, and any man who hereafter simultaneously, or on the same day, marries more than one woman, in a territory or other place over which the United States have exclusive jurisdiction, is guilty of polygamy, and shall be punished by a fine of not more than $500 and by imprisonment, etc."

The third section provides:

"That if any male person in a territory or other place over which the United States have exclusive jurisdiction, hereafter cohabits with more than one woman, shall be guilty of a misdemeanor, and fined and imprisoned, &c."

And I want to say to my friends on the other side of the House that the first and third sections apply to this territory here; that they apply to Washington City; but I am willing to give them the advantage of the charity of the presumption that they have not violated this law since it has taken effect.

Then the eighth section provides—

"That no polygamist, bigamist, &c., shall be eligible for election or appointment to or be entitled to hold any office or place of public trust—"

Under the Government. If you say this law operates *in presenti*, if you say that it operates now, it does not affect Mr. Cannon in the past. Mr. Cannon, in 1881, on the 1st of June, as you say, admitted that he was living with plural wives. That is admitted, but there is no admission or no proof of any violation of this law by Mr. Cannon since the passage of the law. And before a man could be convicted of any offense the offense must not only be charged in accordance with law, but must be proved against him. This law was passed this session. The admission was that he was living with plural wives before the law was passed.

Now, I want to call the attention of my friends on the other side to another fact, and I challenge contradiction from them. I say that Mr. Cannon was living in violation of no law of Congress or of the territory prior to the passage of the act of this session.

You have all charged him with being a felon, with having lived in violation of the law. I say there is not a particle of proof of that assertion in this record; and a man is not to be sent to the penitentiary or condemned without proof. I ask my friends on the other side to take this record, examine it, and show if they can where Mr. Cannon has up to the present time violated any law of Congress.

The law which the act of this session was intended to amend is to be found in section 5352 of the Revised Statutes. Why did Congress amend it? Because that law, under which Mr. Cannon was living, only provided that if after the passage of the law, which was in 1862, any man should marry more than one wife, should contract marriage with two or more women, he should be subject to the penalty prescribed. That law, which the act of this session proposed to amend, does not provide that the cohabiting with two or more women in Utah or any other territory after the passage of that law shall be a criminal offense.

Now, if it is true that the marriage of Mr. Cannon to these women—and his answer in the case of Maxwell *versus* Cannon, referred to by Mr. Pettibone would go to prove as well as all the facts would seem to show that he was living with plural wives—yet, if it is true that he was married to more than one woman, and the marriages were contracted prior to the passage of the law of Congress of 1862, whose defects the anti-polygamy bill was intended to remedy, then simply cohabiting with plural wives since that law took effect was no offense.

Prior to the passage of the law of this session, Mr. Cannon was not living in violation of any law of the United States. If he has married since the passage of the law of this session, he having a wife living, or has cohabited with more than one woman, that would be an offense against the law. But I say there is not a particle of proof in the record or anywhere else to that effect. The presumption is that every man is innocent of any violation of the law until he is proven to be guilty.

The very passage of the act of this session shows that the construction I have given to the prior law is correct; that the prior law did not provide a punishment for cohabitation with more than one woman. This was the very reason why the law of this session was passed. And the law of this session operates only upon persons hereafter; those who marry more than one woman or cohabit with more than one woman after the passage of the law. The former law applied only to marriages. The law of this session goes further, and applies not only to those who marry, but to those who cohabit with more than one woman.

Now, where is the proof that Mr. Cannon was married to plural wives subsequent to the law of 1862? Before that time there was no law in the territory against it. That is the very reason why he answered as he did, as was read by my friend from Tennessee, [Mr. Pettibone], that he was not living with plural wives in violation of law. The statement was true at that time, because whatever marriages there were had taken place prior to 1862, and the law of 1862 could not operate retrospectively upon marriages that had taken place before the passage of that law.

If you say that the bill of this session operates upon Mr. Cannon, you must recollect that the provisions of that bill operate only after the passage of the bill. The bill uses the word "hereafter." It provides that any person who hereafter shall do so-and-so. If the charge against Mr. Cannon is that he has violated that law, then you must show that he has violated it since its passage.

Let me say to the conscientious gentlemen on the other side of the House, and I hope there are many of them, there is not a particle of proof that Mr. Cannon has violated this law. Besides, let me state another fact. One person alone cannot violate the law. It takes more than one. There must be two or more women to consent to the marriage with one man or to consent to cohabitation with him under this law to make it an offense.

The act of polygamy as defined by the bill of this session consists in the fact and in the intention. A great many of my friends have read from dictionaries in regard to the definition of polygamy. Why should you go to the lexicons, to the law dictionaries, to Webster, or anywhere else, when the law itself defines what polygamy is?

Here is the definition: "Every person who, having a husband or a wife living in a territory or other place over which the United States has exclusive jurisdiction, hereafter marries another, whether married or single, or upon the same day marries more than one, &c., shall be guilty of polygamy." And section 3 of the act of this session makes cohabitation with more than one woman a misdemeanor, subject to fine and imprisonment. This description of the offense is clear, and it excludes every other definition or description of polygamy.

Now I would like to ask the gentlemen who are to follow me to point out how Mr. Cannon stands amenable to this law or has violated it. The presumption is that every man is innocent until the contrary is shown. And that presumption applies to Mr. Cannon's case. You must have positive and distinct proof before you can show him to be guilty under this law. Suppose he was to-day indicted under this law, would his admission in 1881 that he was then a polygamist be any proof that he has been a polygamist under this law? Besides, here is the great fact that stares us all in the face, the universal presumption that every man obeys the law, that he violates no criminal law. You have to show it by proof if you make the charge that Mr. Cannon has violated the law. This is the law which gentlemen say he has violated, and this is the law which many of you gentlemen perhaps will base your vote upon against Mr. Cannon.

Now, I say that since the passage of the act of this session Mr. Cannon has not violated the law. It has not been shown that he is now living with two or more women. It has not been shown that since the passage of that law he has married any woman, he having a wife living at that time. No one of the elements that go to constitute the offense of polygamy has been proved in any manner.

Now, what is the presumption of law in such a case as this? On this point I want to read a single authority from one of the Missouri reports, (29 Mo., 259,) a case almost exactly in point. It relates to the principle of presumption of innocence. In this case a party had charged a man and woman with living in adultery. An action of slander was brought. It was proved that the woman admitted that she had been married in Germany before she claimed to have married the person she was then living with. In the court below this instruction had been given:

"If the jury find from the evidence that the plaintiff, Margaret Klein, was married in Germany to another person than Leonard Klein, the plaintiff, then such relation is presumed to continue; and it devolves upon the plaintiffs to prove to the satisfaction of the jury that such marriage was legally terminated before the date of the marriage certificate read in evidence, or they cannot recover."

Now, the supreme court of Missouri, to which the case was appealed, declared that such was not the law—upon what principle? Upon the principle I have just enunciated, that the presumption is every man obeys the law; that where a penal or prohibitory law is passed, the presumption is that everybody obeys it until the contrary is shown. Besides, even if it be shown that a person was at one time a violator of the law, there is a *locus penitentiæ;* there is the time for repentance; so that the persumption of innocence, charitably founded upon the experience of ages, and laid down in all the elementary books, prevails all the time until the contrary is shown. Here is the language of the supreme court of Missouri:

"We think the first instruction which the court gave in this case at the instance of the defendants was erroneous. There was no presumption that a marriage, which was proved to have existed at one time in Germany, continued to exist here after positive proof of a second marriage *de facto* here. The presumption of law is that the conduct of parties is in conformity to law until the contrary is shown. That a fact continuous in its nature will be presumed to continue after its existence is once shown is a presumption which ought not to be allowed to overthrow another presumption of equal if not greater force in favor of innocence.

The court further says:

"The presumption was that this marriage was a lawful one, and that the former marriage in Germany, if any such was established, had been dissolved."

I read further from the language of the court:

"There was not any evidence in this case, so far as the bill of exception shows, that the first husband of Mrs. Klein was still living; but if this had been established, we think she was still entitled to the benefit of the favorable presumption that the first marriage had been dissolved by a divorce, and that it was not incumbent on her, in this character of action and under the pleadings in this case, to produce a record of the judicial or legislative proceedings by which the divorce was effected."

Now apply that to this case. A year ago Mr. Cannon acknowledged that he was living with plural wives, which I have shown you was then in violation of no law of Congress whatever; I challenge any gentleman to show that at the time it was an offense against the law. Now you have passed a law making cohabitation with more than one woman a crime. Why may it not charitably be presumed that Mr. Cannon as a good citizen obeys the law as the rest of us do? That is the presumption of the law; and if so, how or when has it been shown that he has violated the law?

A good deal of newspaper comment and hearsay testimony has been introduced here. I want to call attention to the fact that since the passage of this law the small remnant of polygamy which before existed in the territory of Utah is fast disappearing. The polygamous relations of parties are being broken up. The influence of this law is operating powerfully upon that people; for they now understand that if they live in violation of this law they are subject to fine and imprisonment. The presumption is that under the operation of this law polygamy will cease; that there will be no more violations of the law, and this presumption applies to Mr. Cannon's case.

But gentlemen say that this law operates against Mr. Cannon and excludes him. In what way? There are three sections applying here. The first section defines polygamy and makes it an offense; the third section declares cohabitation an offense; and the eighth section, referring to those two sections, provides—

That no polygamist—

That is, no polygamist as defined by this law; the first and third sections cannot refer to any thing else; construing the whole statute together, this is the legal effect of the law and this is the language:

Sec. 8. That no polygamist, bigamist, or any person cohabiting with more than one woman, and no woman cohabiting with any of the persons described as aforesaid in this section, in any Territory or other place over which the United States have exclusive jurisdiction, shall be entitled to vote at any election held in any such Territory or other place, or be eligible for election or appointment to or be entitled to hold any office or place of public trust, honor, or emolument in, under, or for any such Territory or place, or under the United States.

All the other provisions defining polygamy use the word "hereafter;" that is after the passage of the act; and it is incumbent upon any one making a charge to show that the person accused has violated the law since this act went into operation.

It is said—it has been said by nearly all the gentlemen who have preceded me—that Mr. Cannon comes here covered with crime, and for that reason we cannot admit him. This is the only topic which I shall have opportunity to consider in the time I have remaining. The proposition is that if a man is charged with an offense, it is the duty of this House when he makes his appearance here to exclude him. Now, I think it is a principle laid down in the books (and the precedents of the House are all in that direction) that although a person may be charged with crime, and even actually guilty, it is no consideration for the House upon his admission to a seat, under the Constitution and the laws. It may be said that this only applies to a member; but I think I have shown that the law and the constitutional provisions extend the same principle to a delegate. But if the law does not apply the principle to a delegate, then crime is no disqualification, because there is no law making it so, and you cannot exclude a delegate upon that ground.

To be continued.